

## Commodity Credit Corporation, USDA

## § 1470.12

### § 1470.7 Availability of funds.

The total available program funds shall be \$99.78 million as provided by Section 811 of Public Law 106-387 and amended by Section 1403 of Public Law 106-554.

### § 1470.8 Applicant payment quantity.

(a) The applicant's payment quantity of apples will be determined by the CCC, based on the higher production of 1998 or 1999 crop of apples that was produced by each operation, as selected by the apple operation.

(b) The maximum quantity of the 1998 or 1999 crop of apples for which producers are eligible for a payment for an operation under this subpart shall be 1,600,000 pounds.

### § 1470.9 Payment rate and apple operation payment.

(a) Payments under this subpart may be made to apple operations only up to 1,600,000 pounds of apples produced in the United States during the higher production year of 1998 or 1999. A payment rate will be determined after the conclusion of the application period, and shall be calculated by:

(1) Totaling the higher production of the eligible quantity (not to exceed 1,600,000 pounds) of apples produced from the 1998 or 1999 crop year from all approved applications; and

(2) Dividing the amount available for the Apple Market Loss Assistance Payment program by the total pounds of eligible production submitted and approved for payment (the quantity determined under paragraph (a)(1) of this section).

(b) Each apple operation payment will be calculated by multiplying the payment rate determined in paragraph (a) of this section by the apple operation's eligible production.

(c) In the event that approval of all eligible applications would result in expenditures in excess of the amount available, CCC shall reduce the payment rate in such manner as CCC, in its sole discretion, finds fair and reasonable.

### § 1470.10 Offsets.

(a) Any payment or portion thereof due any person under this part shall be allowed without regard to questions of

title under State law, and without regard to any claim or lien against an operation, an operation's apple production, or proceeds thereof, in favor of the producer or any other creditors, including agencies of the U.S. Government.

(b) Payments received by an apple operation under this part are not subject to administrative offsets or withholdings, including administrative offset under chapter 37 of title 31, United States Code, as provided by Public Law 106-387.

(c) The regulations governing offsets and withholdings found at 7 CFR Part 1403 shall not be applicable to this part.

### § 1470.11 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at 7 CFR parts 11 and 780.

### § 1470.12 Misrepresentation and scheme or device.

(a) An apple operation shall be ineligible to receive assistance under this program if it is determined by the State committee or the county committee to have knowingly:

(1) Adopted any scheme or device which tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a determination under this program. CCC will notify the appropriate investigating agencies of the United States and take steps deemed necessary to protect the interests of the government.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, shall be refunded to CCC, with interest together with such other sums as may become due. Any apple operation or person engaged in acts prohibited by this section and any apple operation or person receiving payment under this part shall be jointly and severally liable with other persons or operations involved in such claim for benefits for any refund due

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under this section and for related charges. The remedies provided in this part shall be in addition to other civil, criminal, or administrative remedies which may apply.

#### **§ 1470.13 Estates, trusts, and minors.**

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible for assistance under this part must also:

(1) Establish that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) Show that a guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) Furnish a bond under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

#### **§ 1470.14 Death, incompetency, or disappearance.**

In the case of death, incompetency, disappearance or dissolution of a person that is eligible to receive benefits in accordance with this part, such person or persons specified in part 707 of this title may receive such benefits, as determined appropriate by CCC.

#### **§ 1470.15 Maintaining records.**

Apple operations making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein, as may be requested by CCC. Such records and accounts must be retained for 3 years after the date of payment to the apple operation under this program. Such records shall be available at all reasonable times for an audit or inspection by authorized representatives of CCC, United States Department of Agriculture, or the Comptroller General of the United States. Failure to keep, or make available, such records may result in refund to CCC of all payments received plus interest thereon, as determined by CCC. Nothing in this section, shall, however, authorize the destruction of any

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records where there is an on-going dispute or where the party involved has reason to know that such records remain material to the operation of the program. Destruction of the records after such date shall be at the risk of the party undertaking the destruction.

#### **§ 1470.16 Refunds; joint and several liability.**

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application, or this part, and if any refund of a payment to CCC shall otherwise become due in connection with the application, or this part, all payments made under this part to any apple operation shall be refunded to CCC together with interest as determined in accordance with paragraph (c) of this section and late payment charges as provided in part 1403 of this title.

(b) All persons signing an apple operation's application for payment as having an interest in the operation shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the application or this part with respect to such operation.

(c) Interest shall be applicable to refunds required of any person under this part if CCC determines that payments or other assistance was provided to a person who was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges the CCC for funds, from the date CCC made such benefits available to the date of repayment or the date interest increases as determined in accordance with applicable regulations. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any action of the person.

(d) Interest determined in accordance with paragraph (c) of this section may be waived at the discretion of CCC alone for refunds resulting from those violations determined by CCC to have been beyond the control of the person committing the violation.

(e) Late payment interest shall be assessed on all refunds in accordance